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**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 6957 of 2016**

Gaurav @ Golu Agrawal S/o Dipak Agrawal Aged About 24 Years R/o Kharora, Police Station Kharora, District Raipur, Chhattisgarh.

---- Applicant

**Versus**

State Of Chhattisgarh Through The Police Station Kharora, District Raipur, Chhattisgarh.

---- Respondent

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Shri Satish Chandra Verma, counsel for the applicant/s.  
Shri Chandresh Shrivastava, Panel Lawyer for the State.

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**Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****17/11/2016**

Heard.

The applicant has been arrested in connection with Crime No.185/2016 registered at Police Station – Kharora, District - Raipur (CG) for alleged commission of offences under Section 376 (2) of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”).

2. Case of the prosecution is that the applicant committed rape on the prosecutrix who is stated to be minor in age.

3. Learned counsel for the applicant prayed for grant of bail by submitting that the applicant has been falsely implicated in the alleged commission of offence. It is submitted that presently, important prosecution witnesses including the prosecutrix have been examined and the statement of the prosecutrix shows that she has not supported the

case of the prosecution and turned hostile and has clearly stated in cross examination that she was in love with the applicant and whatever was done with her, she had not objected nor assaulted nor cried for help.

Referring to the aforesaid statement of the prosecutrix, it has been stated that the prosecutrix, having not supported the case of the prosecution that any rape was committed on her and from the oral evidence of the prosecutrix and material on record, age of the prosecutrix appearing to be more than 18 years of age, applicant may be granted bail.

4. On the other hand, learned counsel for the State opposes prayer for grant of bail by submitting that present is a case where the applicant and his family members are tampering with the prosecution witnesses and winning them by paying money, which has been clearly stated by the prosecutrix herself. Therefore, in these circumstances, if the applicant is granted bail, other prosecution witnesses, who are yet to be examined in the case, are likely to be tampered which would frustrate just and fair conduct of trial of serious allegation of commission of offence of rape against her.

5. According to the prosecution, as revealed from the case diary, the prosecutrix is stated to be approximately 16 years of age. It is alleged that the prosecutrix was working as maid servant and during that period, she was subjected to rape on more than one occasion by the applicant. From the *daakhil khaarij* register maintained in the school, the date of birth is stated to be 16/01/2000 and date of incident is stated to be 28/05/2016.

It is also found from the evidence of the prosecutrix that there are materials at this stage to show that attempts are being made to purchase the prosecution witnesses and that Rs.3 lakhs have been paid to the father of the prosecutrix. Therefore, in these circumstances, possibility of the prosecution witnesses being tampered and fair conduct of the trial being hindered, cannot be ruled out.

6. Their Lordships in the Supreme Court upon survey of large number of decisions, in the case of ***Sanjay Chandra v. Central Bureau of Investigation***<sup>1</sup> held :-

41. “This Court in *Gurcharan Singh v. State (Delhi Admn.)*<sup>8</sup> observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.”

7. In the aforesaid decision, the settled principles in the matter of grant of bail as laid down in the case of ***Prahlad Singh Bhati vs. NCT***<sup>2</sup>, were also noted. In the case of ***Prahlad Singh Bhati*** (supra), the Supreme Court laid down the principles as follows:-

8. “The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words ‘reasonable grounds for believing’ instead of ‘the evidence’ which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond

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1 (2012) 1 SCC 40

2 (2001) 4 SCC 280

reasonable doubt.”

In the case of **Sanjay Chandra** (supra), the principles applicable in the matter of consideration for grant of bail, as laid down in the case of **State of U.P. vs. Amarmani Tripathi**<sup>3</sup>, were also taken into consideration. In that case, it was held:

18. “It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) *character, behaviour, means, position and standing of the accused*; (vi) likelihood of the offence being repeated; (vii) *reasonable apprehension of the witnesses being tampered with*; and (viii) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati v. NCT, Delhi*<sup>17</sup> and *Gurcharan Singh v. State (Delhi Admn.)*<sup>8</sup>]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan*<sup>19</sup>: (SCC pp. 535-36, para 11)

‘11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court

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3 (2005) 8 SCC 21

granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*<sup>20</sup> and *Puran v. Rambilas*<sup>21</sup>.)'

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In the case of **Sanjay Chandra** (supra), while noting that though offences are serious, it was observed that when there are no serious contention of the respondent that if the applicant is released on bail, he would interfere with the trial or tamper with evidence, it would not be in the interest of justice that the accused should be in jail for an indefinite period.

8. In a subsequent decision in the case of **Gulabrao Baburao Deokar vs. State of Maharashtra and others**<sup>4</sup>, the supreme Court noted, in the backdrop of serious allegations of commission of offence under Prevention of Corruption Act that attempts were made by the applicant therein to pressurize the witnesses and even the investigating agency and then proceeded to hold that by that time, it was probable that the applicant will be pressurizing the witnesses if he is not restrained. On this ground, the order of cancellation of bail was upheld, particularly taking into consideration the nature and seriousness of economic offences and its impact on the society being important considerations.

9. If the aforesaid settled legal position is applied to the present case, as has been discussed herein above, possibility of tampering with the prosecution witnesses cannot be ruled out. The applicant may flee away from justice.

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<sup>4</sup> (2013) 16 SCC 190

10. Therefore, in these circumstances, I am not inclined to grant bail to the applicant. The application is therefore rejected.

Sd/-  
**(Manindra Mohan Shrivastava)**  
**Judge**

Deepti